

THE HONORABLE RICARDO S. MARTINEZ

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UTHERVERSE GAMING LLC,
Plaintiff,

v.

EPIC GAMES, INC.,
Defendant.

Case No. 2:21-cv-00799-RSM

[PROPOSED] PRETRIAL ORDER

PROPOSED PRETRIAL ORDER
CASE NO. 2:21-CV-00799-RSM

97394537.4

 **POLSINELLI**
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Pursuant to Western District of Washington Local Rule 16(e), Plaintiff Uthervse Gaming LLC (“Uthervse Gaming”) and Defendant Epic Games, Inc. (“Epic”) jointly submit this Proposed Pretrial Order.

JURISDICTION

This Court has subject matter jurisdiction of the action pursuant to Title 28, U.S.C. §§ 1331 and 1338(a), because this action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* Subject matter jurisdiction, personal jurisdiction, and venue pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) are not disputed in this case.

CLAIMS AND DEFENSES¹

Uthervse Gaming will pursue at trial² the following claims:

- 1) Uthervse Gaming claims that Epic infringed claims 2, 5 and 8 of the U.S. Patent No. 9,724,605 (“the ’605 Patent”) under 35 U.S.C. § 271(a). Specifically, Uthervse Gaming claims that the Travis Scott Events and the Ariana Grande Events (as those terms are defined below) (together, the “accused events”) directly infringed claims 2, 5 and 8 of the ’605 Patent.
- 2) Uthervse Gaming seeks damages adequate to compensate for Epic’s infringing activities in an amount to be determined at trial, together with interests and costs.

¹ The following claims and defenses are presented with each party making full reservation as to any objection or *in limine* challenge pending or later brought before the Court.

² Uthervse Gaming reserves all rights to appeal the Court’s ruling to date, including the Court’s claim construction (ECF Nos. 133, 146) and the Court’s partial summary judgment in favor of Epic that the asserted claims of U.S. Patent No. 8,276,071 were invalid and not infringed (ECF Nos. 368, 369, 391).

Epic will pursue at trial the following affirmative defenses and/or claims³:

- 1) Epic denies that the accused events infringed claims 2, 5, or 8 of the '605 Patent and seeks a judgment of non-infringement on this basis.
- 2) Epic asserts and seeks a judgment that claims 2, 5, and 8 of the '605 Patent are invalid under 35 U.S.C. §§ 102 and/or 103 as anticipated and/or obvious in view of existing prior art; 35 U.S.C. § 101 as failing to recite patent-eligible subject matter, and 35 U.S.C. § 112, as the claims are indefinite and/or are not enabled.
- 3) Epic denies that Utherverse Gaming is entitled to damages.

ADMITTED FACTS

The following facts are admitted by the parties:

The Parties

- 1) Utherverse Gaming is a Delaware limited liability company with a place of business at 1740 Broadway, 15th Floor, New York, New York, 10019.
- 2) Utherverse Gaming is the owner of the '605 Patent and holds the right to bring causes of action for past, current, and future infringement.
- 3) Epic is a corporation organized and existing under the laws of the State of Maryland with its headquarters at 620 Crossroads Blvd. Cary, North Carolina, 27518.
- 4) Epic created and operates *Fortnite*, the video game in which the accused events took place.

The '605 Patent

- 5) The '605 Patent is entitled "Method, System and Apparatus of Recording and Playing Back an Experience in a Virtual Worlds System."

³ Epic reserves all rights to appeal the Court's rulings to date, including the Court's denial of summary judgment that Epic did not infringe the asserted claims of the '605 patent (ECF Nos. 368, 369, 391).

- 6) The application that became the '605 Patent was filed on August 12, 2014.
- 7) The '605 Patent was issued by the United States Patent and Trademark Office on August 8, 2017.
- 8) The named inventors of the '605 Patent are Brian Shuster and Aaron Burch. Utherville Gaming acquired rights, title, and interest in the '605 Patent pursuant to the December 2020 Patent Purchase and License Agreement.

The Accused Events

- 9) Epic created and presented an animated event featuring music by Travis Scott (the "Travis Scott Events") that took place in its multiplayer online video game *Fortnite* in April 2020.
- 10) Players could watch the Travis Scott Events at five different showtimes between April 23, 2020 and April 25, 2020.
- 11) Epic admits that the Travis Scott Events involved creating new instances of a scene and that players participated in the instances using client devices.
- 12) Epic admits that the instances of the Travis Scott Events were three-dimensional.
- 13) Epic created and presented an animated event featuring music by Ariana Grande (the "Ariana Grande Events") that took place in its multiplayer online video game *Fortnite* in August 2021.
- 14) Players could watch the Ariana Grande Events at five different showtimes between August 6, 2021 and August 8, 2021.
- 15) Epic admits that the Ariana Grande Events involved creating new instances of a scene, and that players participated in the instances using client devices.
- 16) Epic admits that the instances of the Ariana Grande Events were three-dimensional.

ISSUES OF FACT

The following are the issues of fact to be determined by the jury:

- 1) Whether Utherverse Gaming has proven, by a preponderance of the evidence, that Epic directly infringed claims 2, 5 or 8 of the '605 Patent pursuant to 35 U.S.C. § 271(a).
- 2) Whether Epic has proven, by clear and convincing evidence, that claims 2, 5 and 8 of the '605 Patent are invalid.
- 3) Whether and to what degree Utherverse Gaming has proven it is entitled to a reasonable royalty under 35 U.S.C. § 284.

ISSUES OF LAW

The Court previously construed claim terms that appear in the '605 patent. DKT. 133 (ORDER RE: CLAIM CONSTRUCTION). The Court's construction is at issue in motions *in limine* submitted by both parties. *See* DKT. 408 (UTHERVERSE GAMING'S MOTIONS IN LIMINE, MIL No. 6), 8:12-9:23; DKT. 414 (EPIC GAMES' MOTIONS IN LIMINE, MIL No. 1), 2:4-4:21.

Utherverse Gaming suggests the following claim construction based on the Court's Order:

Term	Construction
Avatar	A computer-generated figure in a virtual environment that represents and is operated by a human player.
Initial Scene State	Scene state information, including at least a position and orientation of objects, including avatars, rendered in the scene at a beginning of a time period of a new recording of a scene. DKT. 133:3:11-14 The construction does not require the presence of avatars; avatars may simply be included. DKT. 133:13:11-13

Recorded Experience File	<p>[A file containing] a recording of a prior experience that occurred in a virtual environment. DKT. 133:3:22-24</p> <p>That experience “must be from a prior experience rather than a display allowing for real-time interaction,” including “new gameplay.” DKT. 133:13:15-17.</p>
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Epic Games suggests the following claim construction based on the Court’s Order:

Term	Construction	Claims
Avatar	A computer-generated figure in a virtual environment that represents and is operated by a human player.	1 and 2
Initial Scene State	Scene state information, including at least a position and orientation of objects, including avatars, rendered in the scene at a beginning of a time period of a new recording of a scene. DKT. 133:3:11-14	1
Recorded Experience File	[A file containing] a recording of a prior experience that occurred in a virtual environment. DKT. 133:3:22-24	1, 2, 5, 8

The parties agree that the following are the issues of law to be determined by the court:

- 1) Whether Utherverse Gaming is entitled to prejudgment and/or post-judgment interest and costs if Epic is found liable for infringement.
- 2) Whether Epic is entitled to attorneys’ fees and/or costs if Epic is not found liable for infringement.
- 3) All issues of law and/or mixed issues of fact and law to be raised in the parties’ forthcoming motions *in limine*.

METHOD OF PRESENTING ADVERSE WITNESS TESTIMONY

If Epic intends to call live at trial any Epic-affiliated witness who is on Utherverse Gaming's will-call or may-call list, Epic agrees to make efforts to make that witness available to Utherverse Gaming during Utherverse Gaming's case-in-chief. If an Epic-affiliated witness is called adversely by Utherverse in Utherverse's case-in-chief, Epic may exceed the scope of Utherverse Gaming's direct examination on cross so that the witness does not need to be recalled during Epic's case-in-chief. Should Epic exceed the scope as allowed for above, that witness may then be subjected to further examination by Utherverse Gaming but only as to that subject matter that exceeded the scope of cross-examination. Epic may then have the final examination for that witness but limited in scope to the further Utherverse Gaming examination.

If Epic does not intend to call an Epic-affiliated witness live and who is on Utherverse Gaming's will-call or may-call list, that witnesses is deemed unavailable pursuant to FRCP 32(a)(4). Utherverse Gaming may use that witness's deposition and any corresponding video as substantive evidence to the extent allowable by the Federal Rules of Evidence.

Similarly, if an Utherverse Gaming-affiliated witness who is on Epic's will-call or may-call list is called live in Utherverse Gaming's case-in-chief, Epic may exceed the scope of direct on cross-examination followed by re-direct by Utherverse Gaming and limited re-cross by Epic. The same arrangement as to scope and examination outlined above with respect to the Epic witness will likewise apply to the Utherverse Gaming witness. If Utherverse Gaming does not call a Utherverse Gaming-affiliated witness live and who is on Epic's will-call or may-call list, that witnesses is deemed unavailable pursuant to FRCP 32(a)(4) and Epic may use that deposition and any corresponding video as substantive evidence to the extent allowable by the Federal Rules of Evidence.

Notwithstanding the above, both Utherverse Gaming and Epic, per FRCP 32(a)(3), may use adverse party deposition testimony for any purpose, to the extent allowable by the Federal

Rules of Evidence, that was taken from “anyone who, when deposed, was the party’s officer, director, managing agent, or designee under Rule 30(b)(6).”

EXPERT WITNESSES

(a) Each party shall be limited to 3 expert witnesses on the issues of infringement, validity, and damages.

(b) The name(s) of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of Utherverse Gaming:

Utherverse Gaming’s expert witnesses shall offer testimony as follows:

Utherverse Gaming Trial Expert Witnesses	Delivery of Testimony	Expected Testimony
Dr. Craig Rosenberg	Will Call In-Person	Technical Expert for Infringement of the '605 Patent <ul style="list-style-type: none"> • Background on the technology disclosed in the '605 Patent and the invention of the '605 Patent. • The teachings and knowledge of the state of the art at the time of the invention disclosed and claimed in the '605 Patent. • Will rely on handbooks, textbooks, technical literature, and other materials to demonstrate the state of the art at the relevant time period and the evolution of relevant technologies. • Technical opinions on how Epic Games, Inc. infringes the asserted claims 2, 5, and 8 of the '605 Patent by Epic with the technology used to create, host and offer the accused Travis Scott and Ariana Grande

Utherverse Gaming Trial Expert Witnesses	Delivery of Testimony	Expected Testimony
		<p>Events based on the opinions set forth in his expert report and any testimony offered by the witnesses during trial.</p> <ul style="list-style-type: none"> • Rebuttal to Epic's noninfringement positions and opinions presented by its experts and any testimony offered by witnesses during trial. • All other opinions set forth in his expert report served in this case or discussed during the course of his deposition.
David Crane	Will Call In-Person	<p>Technical Expert for validity and rebuttal</p> <ul style="list-style-type: none"> • Background on the technology disclosed in the '605 Patent and the invention of the '605 Patent. • The state of the art at the time of the invention disclosed and claimed in the '605 Patent. • The prior art identified by Epic in its Invalidity Contentions, and further included and discussed by Epic's experts in opinions regarding the invalidity of the '605 Patent. • All other opinions set forth in his expert report served in this case or discussed during the course of his deposition. • Rebuttal or counter of any testimony offered by Epic as to invalidity.
Michele Riley	Will Call In-Person	<p>Damages Expert</p> <ul style="list-style-type: none"> • The degree Utherverse Gaming is entitled to recover damages adequate to compensate it for Epic's infringement, but in no event less than a reasonable royalty, under 35 U.S.C. § 284.

Utherverse Gaming Trial Expert Witnesses	Delivery of Testimony	Expected Testimony
		<ul style="list-style-type: none"> • Assignment, evidence considered, and assumptions used in rendering her opinion. • Reasonable royalty and royalty base determinations • Overview of the relevant industries, the parties, the accused events, and the '605 Patent • Key event timeline • Opinions regarding the appropriate form of damages • Georgia-Pacific Factors, including the date of the hypothetical negotiation, the appropriate damages period, the parties to hypothetical negotiation, the structure of the hypothetical license agreement. • The benefits realized by Epic through hosting the accused events. • Rebuttal to Epic's damages positions and opinions presented by its experts and any testimony offered by witnesses during trial. • All other opinions set forth in her expert report served in this case or discussed during the course of her deposition.

Utherverse Gaming objects to the proffered testimony of Epic's expert witnesses to the extent it includes subject matter or materials that were not presented or discussed in its expert reports or otherwise addressed in the course of deposition. Utherverse Gaming also objects to the proffered testimony of Epic's expert witnesses to the extent it includes subject matter or materials that are inconsistent with, or were not disclosed, in Epic's corresponding contentions or interrogatory responses.

(2) On behalf of Epic:

Epic objects to the proffered testimony of Utherverse's expert witnesses to the extent that it includes subject matter or materials that were not presented or discussed in its expert reports. Epic also objects to the proffered testimony of Utherverse's expert witnesses to the extent that it includes subject matter or materials that are inconsistent with, or were not disclosed, in Utherverse's corresponding contentions or interrogatory responses. Epic's expert witnesses shall offer testimony as follows:

Epic Trial Expert Witnesses	Delivery of Testimony	Expected Testimony
Benjamin Ellinger	Will Call In-Person	<p>Technical Expert for Non-infringement (to the extent Epic offers expert testimony on infringement to rebut Utherverse's expert) and Invalidity of the '605 Patent</p> <p>The opinions and matters set forth in Mr. Ellinger's expert reports served in this litigation, including:</p> <ul style="list-style-type: none"> • Background on the technology and invention disclosed in the '605 Patent. • The teachings and knowledge of the state of the art at the time of the invention disclosed and claimed in the '605 Patent. • Technical opinions regarding Epic's non-infringement of the asserted claims of the '605 Patent. • Technical opinions regarding the invalidity of the '605 Patent. • Non-infringing alternatives to the invention claimed in the '605 Patent.

Epic Trial Expert Witnesses	Delivery of Testimony	Expected Testimony
		<ul style="list-style-type: none"> • The technological comparability to the '605 Patent of patents that are the subject of licenses cited by Utherverse's damages expert to the '605 Patent. • Rebuttal to Utherverse's infringement and validity positions. • All other opinions set forth in his expert report served in this case or discussed at his deposition.
Lauren Kindler	Will Call In-Person	<p>Damages Expert (to the extent Epic offers expert testimony on damages to rebut Utherverse's expert)</p> <p>The opinions and matters set forth in Ms. Kindler's expert report served in this litigation, including:</p> <ul style="list-style-type: none"> • Opinions regarding the amount of reasonable royalty that should be awarded to Utherverse under 35 U.S.C. § 284 in the event that Epic is found liable for infringement of the '605 Patent. • Background of the industry, the parties, Epic's products, and the accused events. • The framework and methodologies used for calculating damages. • Opinions regarding the appropriate form of damages. • The relevant <i>Georgia-Pacific Factors</i> in this case, including an assessment of the outcome of a hypothetical negotiation

Epic Trial Expert Witnesses	Delivery of Testimony	Expected Testimony
		<p>between the parties at the time infringement first began.</p> <ul style="list-style-type: none"> • Rebuttal to Utherville's damages positions and opinions. • All other opinions set forth in her expert report served in this case or discussed at her deposition.

OTHER WITNESSES

The names of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of Utherville Gaming:

Utherville Gaming Other Witnesses	Delivery of Testimony	Expected Testimony
Brian Shuster	Will Call In-Person	<p>Inventor on '605 Patent</p> <ul style="list-style-type: none"> • His background and experience with the technology disclosed in the '605 Patent. • His knowledge about the state of the art at the time he was working on the invention claimed in the '605 Patent. • Inspiration for the invention disclosed and claimed in the '605 Patent. • The '605 Patent and the state of the art at the time of the invention
Aaron Burch	Will Call In-Person	<p>Co-inventor on '605 Patent</p> <ul style="list-style-type: none"> • His background and experience with the technology disclosed in the '605 Patent.

Utherverse Gaming Other Witnesses	Delivery of Testimony	Expected Testimony
		<ul style="list-style-type: none"> • Inspiration for the invention disclosed and claimed in the '605 Patent. • The '605 Patent and the state of the art at the time of the invention
David Cohen	Will Call In-Person	Corporate Representative for Utherverse Gaming LLC <ul style="list-style-type: none"> • His background and experience with intellectual property and intellectual property licensing. • Role and responsibilities at Utherverse Gaming with respect to its intellectual property licensing program. • Utherverse Gaming's right, title, and interest in the '605 Patent
Peter Axt	Will Call In-Person Adverse	<ul style="list-style-type: none"> • Epic Games Services Team. • Mr. Axt's role and responsibilities as the engineering director of internal service -- internal game services. • Testimony consistent with Mr. Axt's 30(b)(6) Corporate deposition testimony taken on April 12, 2023. • The tools, editors and other technology created and used by Epic for the Travis Scott and Ariana Grande Events. • Epic's MMS Documentation. Epic's Run-of-show documents for the Travis Scott and Ariana Grande Events. • Epic's use of Unreal Engine Sequencer to create files that allowed for the Travis Scott and Ariana Grande Events.
Mark Imbriaco	Will Call	<ul style="list-style-type: none"> • Designated 30(a)(1) and 30(b)(6) deposition testimony.

Utherverse Gaming Other Witnesses	Delivery of Testimony	Expected Testimony
	Adverse Depo Designations	
Matt Weissinger	Will Call In-Person Adverse	<ul style="list-style-type: none"> • Epic VP of Marketing • Epic's financial data and user-metrics related to the Travis Scott and Ariana Grande Events • Epic had no formal or informal patent licensing policies
Brian Boyle	May Call Adverse Depo Designations	<ul style="list-style-type: none"> • Designated 30(b)(6) deposition testimony.

Utherverse Gaming objects to certain Epic's witnesses, specifically Ami Shah and Patrick Diaz, whom Epic proposes to present through portions of deposition testimony. This deposition testimony relates to irrelevant non-party information that has no bearing on the claims or defenses in this action. Utherverse Gaming's objections to Epic's designated testimony are noted in Exhibit C.

Utherverse Gaming further objects to Epic's expected testimony where the scope of testimony is not relevant to any claim or defense in this action or is otherwise inadmissible under the Federal Rules of Evidence

(1) Witness Deposition Designations

Charts containing Utherverse Gaming's Affirmative Deposition Designations, including Epic's objections and counter-designations are attached hereto as Exhibit A.

Utherverse Gaming reserves the right to amend its deposition designations, its objections to Epic's deposition designations, and its counter-designations as appropriate including in response to new information that arises as the parties progress toward trial. With respect to Epic's objections and counter-designations, Utherverse Gaming reserves the right to rely on any testimony initially

designated by Epic as a counter-designation even if objected to. To the extent any objections by counsel are designated in the transcripts, Utherville does not intend or consent to include objections with deposition videos played in court.

With respect to Epic's affirmative deposition designations of Brian Shuster's deposition testimony, Utherville Gaming does not understand Epic to be suggesting that it will play deposition designations from Mr. Brian Shuster because he will testify live at trial, and Utherville Gaming objects to the presentation of any deposition designations from Mr. Brian Shuster in view of his presence to testify live at trial.

(b) On behalf of Epic:

Epic Other Witnesses	Delivery of Testimony	Expected Testimony
Brian Shuster	Will Call In-Person Adverse	<p>Named inventor of the s'605 Patent, CEO of Utherville Digital</p> <ul style="list-style-type: none"> The subject matter of the '605 Patent. The conception and reduction to practice of the invention claimed in the '605 Patent. The state of the art at the time of the invention of the '605 Patent. Licensing and/or offers for sale of the '605 Patent. Utherville Digital's business operations and practices, including the creation, development, and/or marketing of any Utherville Digital product related to the invention claimed in the '605 Patent. The subject matter of the witness's deposition testimony in this litigation.
Aaron Burch	Will Call In-Person	Named inventor of the s'605 Patent, Former CTO of Utherville Digital

Epic Other Witnesses	Delivery of Testimony	Expected Testimony
	Adverse	<ul style="list-style-type: none"> • The subject matter of the '605 Patent. • The conception and reduction to practice of the invention claimed in the '605 Patent. • The state of the art at the time of the invention of the '605 Patent. • Utherville Digital's business operations and practices, including the creation, development, and/or marketing of any Utherville Digital product related to the invention claimed in the '605 Patent. • The subject matter of the witness's deposition testimony in this litigation.
David Cohen	Will Call In-Person Adverse	Utherville Gaming Corporate Representative <ul style="list-style-type: none"> • Utherville Gaming's business operations and practices. • Licensing and/or offers for sale of the '605 Patent. • The subject matter of the witness's deposition testimony in this litigation.
Ami Shah	May Call Depo Designations	Fortress Investment Group and Utherville Gaming Corporate Representative <ul style="list-style-type: none"> • Fortress Investment Group and Utherville Gaming's business operations, records, and practices. • The relationship between Fortress Investment Group and Utherville Gaming. • The subject matter of the witness's deposition testimony in this litigation.

Epic Other Witnesses	Delivery of Testimony	Expected Testimony
Patrick Diaz	May Call Depo Designations	Utherverse Gaming Corporate Representative <ul style="list-style-type: none"> • Utherverse Gaming’s business operations, records, and practices. • Utherverse Gaming’s finances and financial records. • The subject matter of the witness’s deposition testimony in this litigation.
Peter Axt	Will Call In-Person	Engineering Director, Internal Game Services at Epic <ul style="list-style-type: none"> • Mr. Axt’s role at Epic. • The development, structure, function and operation of the accused events and the technology underlying those events, including an overview of Fortnite, the client-server architecture used by Fortnite, the MMS used by Fortnite, and the Unreal Engine Sequencer. • The subject matter of his deposition and the topics on which he was designated by Epic under Rule 30(b)(6).
Mark Imbriaco	May Call In-Person or Responsive Depo Designations	Former Senior Director of Engineering at Epic <ul style="list-style-type: none"> • Mr. Imbriaco’s prior role at Epic. • The structure, function and operation of the accused events and the technology underlying those events, including an overview of <i>Fortnite</i>, the client-server architecture used by <i>Fortnite</i>, and the MMS used by <i>Fortnite</i>.

Epic Other Witnesses	Delivery of Testimony	Expected Testimony
		<ul style="list-style-type: none"> The subject matter of his deposition and the topics on which he was designated by Epic under Rule 30(b)(6).
Matt Weissinger	Will Call In-Person	<p>Former Vice President of Marketing at Epic</p> <ul style="list-style-type: none"> The production and development of the accused events, including the amount and type of resources used to put on the accused events. Customer, industry, and media feedback and reception of the accused events. Demand drivers for the accused events. Marketing for the accused events. Success factors for the accused events. The amount and type of revenue related to the accused events. Epic's IP licensing agreements, history, and practices. The subject matter of his deposition and the topics on which he was designated by Epic under Rule 30(b)(6).
Brian Boyle	May Call Responsive Depo Designations	<p>Vice President, Controller at Epic</p> <ul style="list-style-type: none"> Financial information related to the accused events, including Epic's revenue, costs, and accounting practices.

Epic Other Witnesses	Delivery of Testimony	Expected Testimony
Christopher Greenhalgh	Will Call Depo Designations	Professor of Computer Science, University of Nottingham <ul style="list-style-type: none"> • Testimony regarding prior art systems and their public availability at the time of the invention disclosed and claimed in the '605 Patent. • The subject matter of the witness's deposition testimony in this litigation.
James Yen	Will Call Depo Designations	Lead Producer, Blizzard Entertainment <ul style="list-style-type: none"> • Testimony regarding prior art systems and their public availability at the time of the invention disclosed and claimed in the '605 Patent. • The subject matter of the witness's deposition testimony in this litigation.

(1) Witness Deposition Designations

Charts containing Epic's Affirmative Deposition Designations, including Utherverse Gaming's objections and counter-designations, are attached hereto as Exhibit C.

Epic reserves the right to amend its deposition designations, its objections to Utherverse's deposition designations, and its counter-designations as appropriate including in response to new information that arises as the parties progress toward trial. With respect to Utherverse's objections and counter-designations, Epic reserves the right to rely on any testimony initially designated by Utherverse as a counter-designation even if objected to. To the extent any objections by counsel are designated in the transcripts, Epic does not intend or consent to include objections with deposition videos played in court.

(c) The parties are submitting transcript excerpts containing deposition designations, responsive designations, and objections, required by LCR 32(e), directly to chambers. The parties will file those excerpts on the docket at the Court's request. Certain of these designations are at issue in the parties' pending motions *in limine*. The parties will continue to meet and confer to discuss the scope of designated testimony and make efforts to resolve any objections, and will provide to the Court a final copy of designated transcripts in advance of trial at a date to be set by the Court. The parties agree that no waiver of the right to respond to objections has occurred.

EXHIBITS

Utherverse Gaming's Exhibit List, including Epic's objections thereto, is attached hereto as Exhibit B. Epic reserves the right to amend or remove objections as appropriate, including in response to new information that arises as the parties progress toward trial. Utherverse Gaming's exhibits are numbered consecutively beginning with the number "001" (one).

Epic's Exhibit List, including Utherverse Gaming's objections thereto, is attached hereto as Exhibit D. Utherverse Gaming reserves the right to amend or remove objections as appropriate, including in response to new information that arises as the parties progress toward trial., Epic has identified on its list only those documents that are not duplicated on Utherverse's exhibit list. Epic's exhibits are numbered consecutively beginning with "A-001."

Once a party has identified an exhibit in the Pretrial Order, any party may seek to introduce it at trial. Hardcopies of the Exhibits will be submitted in a three-ring binder with appropriately numbered tabs approximately seven days before the trial date, to be set by the Court at the pretrial conference. The parties will present all exhibits to the witnesses and jury electronically during trial, using the courtroom technology.

MOTIONS IN LIMINE

The parties filed motions *in limine* on August 30, 2024. *See* DKT. 408, 414. Since that date, the parties have met and conferred to resolve certain issues raised in the motions. The parties are working on a joint stipulation to be provided to the court in advance of trial.

ACTION BY THE COURT

(a) This case is scheduled for trial before a jury on October 7, 2024, at 9:00 AM.

(b) Jury instructions requested by either party shall be submitted to the court on or before September 6, 2024. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before _____.

(c) [Insert any other ruling made by the court at or before pretrial conference.]

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this ____ day of _____, 2024.

United States District Judge

FORM APPROVED

/s/ *Emily C. McNally*_____

Attorney for Utherverse Gaming

/s/ *Eric C. Weiner*_____

Attorney for Epic

1 Filed September 6, 2024

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